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## HISTORY OF THE INSTITUTE CORNER IN THE RUSSIAN EMPIRE IN THE ASPECT OF JUDICIAL REFORM IN 1864

## ІСТОРІЯ ВПРОВАДЖЕННЯ ІНСТИТУТУ СУДОВОГО СЛІДЧОГО В РОСІЙСЬКІЙ ІМПЕРІЇ В АСПЕКТІ СУДОВОЇ РЕФОРМИ 1864 РОКУ

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This article is dedicated the institution of judicial investigator, judicial reform implemented in 1864, and analysis of the mechanism of its formation and functioning of the Russian Empire.

**Key words:** judicial investigator, powers, judicial system, reform, the Russian Empire.

У статті розглядається інститут судового слідчого, впроваджений судовою реформою 1864 року, та аналіз механізму його становлення і функціонування в Російській імперії.

**Ключові слова:** судовий слідчий, повноваження, судова система, реформа, Російська імперія.

В статье рассматривается институт судебного следователя, внедренный судебной реформой 1864 года, а также анализ механизма его становления и функционирования в Российской империи.

**Ключевые слова:** судебный следователь, полномочия, судебная система, реформа, Российская империя.

**Statement of the problem.** The need to protect of rights, freedoms and legitimate interests of the criminal proceedings in Ukraine as well as providing impartial and effective investigation lead to the development and implementation of new legal institutions to improve the system of criminal procedural guarantees.

To facilitate the implementation of these tasks Criminal Procedural Code of Ukraine, adopted April 13, 2012 (hereinafter – CCP 2012), enters into the sphere of domestic criminal procedural process of a new entity – the investigating judge [1, 1]. In accordance with paragraph 18 of Part 1 Article 3 CPC 2012 the investigating judge – a trial judge, whose powers to exercise in the manner prescribed by this Code, judicial enforcement of rights, freedoms and interests of persons in criminal proceedings, and in the case provided for in Article 247 of this Code – Chairman or in his definition of another judge of the Appellate Court of the Autonomous Republic of Crimea, regional courts of appeal, the cities of Kyiv and Sevastopol. [2] In connection with the adoption of the CCP in 2012 amended the Law of Ukraine on July 7, 2010 № 2453-VI «On the Judicial System and Status of Judges», in particular,

§ 5. 21 of the Act provides that the investigating judge elected assembly of judges of local courts of the judges of this court for a term not exceeding three years and may be re-elected. [3]

At the time of national researchers and practitioners do not stop discussions on the implementation of the functioning model of the investigating judge. It is known that the most widely phrase «coroner» acquired after the Russian Empire judicial reform in 1864. Comparison of modern domestic judicial system with bases royal reformed judiciary is very informative. In this regard, important to the scientific study of historical processes of emergence and development institute a judicial investigation.

**Analysis of recent research and publications.** Judicial review has long been a subject of study of domestic and foreign scholars. Questions origin, development, competence coroner (investigating judge), his place, role and functioning of the mechanism were studied and analyzed in scientific work of scholars such as I. Ivanenko [14], A. Koni [12], A. Kruglikova [13], Y. Roschina [5, 11], N. Siza [1], L. Solovyov [6], Y. Skripin [10], A. Tumanants [4], I. Foyntskyy [7], V. Szymanowski [8], S. Shcheglovitov [9] and others.

**The aim of the article is:** based on doctrinal beliefs domestic and foreign scholars to analyze the historical aspect of the establishment and functioning of procedural shape coroner in reform during 1864 in the Russian Empire and the author make conclusions.

**The main material.** In the criminal procedure legislation of European countries and CIS countries differently defined entity authorized to control functions in pretrial proceedings. For example, the position of the investigating judge is in the PDA Latvia and Italy. In criminal proceedings France operate and investigative judge, and the judge of freedoms and detention. Judge for prosecution CCP provided Republic of Moldova. The PDA Lithuania secured the status of pre-trial judge. In Germany, judicial powers during the investigation judge assigned to an investigator [4, p. 898].

In 1864, during the judicial reform in the Russian Empire was founded Institute of Forensic investigator who has preliminary investigation as a representative of the judiciary, which had a pre-trial investigation democratic character.

The appearance of this post has stimulated competition in criminal proceedings because the coroner was not representative of the prosecution, the prosecution did not make [5, p. 16].

It is worth noting that the first is implemented in the principle of separation of courts to criminal and civil. The court was regarded as an organ specific organization not affiliated with the state apparatus. Introduction Institute of Forensic investigators was one of the driving elements of judicial reform in 1864 because it meant a transition from inquisitorial criminal in the democratic process in Russia. The coroner was the bearer of the judiciary and belonged to the category of persons the judicial ranks.

The legislation was law the provisions on the separation of the judiciary from the administrative and prosecutorial (Decree on the separation of the police investigation, the Office coroner, coroner Order of June 8, 1860, Summary of the transformation of the judicial sector in Russia on 29 September 1862, provisions are unchanged entered the legal regulations on November 20, 1864) [6, p.4]. The fundamental piece of legislation was the Statute of criminal justice Empire 1864r. (Hereinafter – SCS), which aimed to unite the judicial organization, giving the judiciary proper fullness. The system of judiciary but the judges included the coroner with the subordination of the judiciary – the officer whose activity was necessary in the interests of free movement of judicial review proceedings in general [7, p. 198].

In this position permanently appointed person under the age of 25, had a law degree or «proven their knowledge in the service of on court» and were brought to the set for the judges swearing [8, with. 112].

For special moral requirements for candidates for the position, the position of the SCS lead their negative signs, indicating who may be appointed to this position: persons under investigation and trial for crimes and misdemeanors, removed from office, according to the judgment or clerical department, declared bankrupt and others.

With this appointment holder of judicial power, the coroner had to be independent. In CSC stating that the legislature has in mind in such a way «to increase judicial power to give her a proper independence» [9, p. 3].

For the purpose of investigating its judicial functions may be described as follows:

1. Based on the rights and obligations associated with the investigation of a criminal case, he was required to: (1) to institute criminal proceedings and to investigate a crime, (2) to establish the health of facts under which decided the question of to bring defendants to court, and his guilt; (3) report on the investigation started his prosecutor in certain cases, (4) to take all measures necessary for carrying out the investigation, (5) monitor the performance of their legal requirements relevant officials and agencies without delay, and in case of resistance to demand and promote civil military leaders and outsiders;

(6) inspect, amend and revoke decisions Police conducted its initial study, (7) to apply safeguards, (8) to charge the police inquiry and gathering the necessary information and so on.

2. Control the power of judicial investigation consisted in the fact that he was entitled to: (1) the immediate release of illegally deprived of liberty (Art. 491 SCS), (2) to monitor the inspection and seizure of correspondence from postal and telegraph facilities (Art. 509 SCS); (3) to consider the legality and validity of measures for alleged civil action or claim for compensation for confiscated property (Article 268 SCS), (4) impose penalties for police officers for negligence and disorder on investigations (Articles 485, 486 and 488 SCS), (5) to decide on the disqualification of the investigator (Article 274 SCS) and others. [10, p. 20-21].

Coroner, conducting preliminary investigation was to establish the circumstances that justify the accused person and that is why these and other authorities do not allow the coroner attributed to either party. His impartiality ensured no procedural stance of the case and the carrier status of the judiciary. In a sense, the coroner was arbitrator in a dispute with the prosecution (prosecutor, whose requirements for investigative action to collect incriminating evidence against the accused were required for the coroner) and the defense (the defendant who had the right to be present during the questioning of witnesses and other investigations). This function is a common judicial investigation and the time when the accused admitted back on the stage of preliminary investigation and enjoys his client with his extensive rights, including the right to participate in the proof.

Describing the activities of judicial investigators pre-revolutionary period, it should be noted that they had all set mandatory powers in the detection and investigation of crimes, including the use of measures of procedural coercion. Upon assuming the preliminary investigation, the investigator had to spend it according to the circumstances of the case, involving where appropriate new people. He alone carried out all necessary investigations, interrogations of the accused and the application of preventive measures, questioning witnesses, an examination, review of evidence, search and seizure, having the right to use to help police officers. Preliminary investigation ended acquaintance with those accused in the case. Then the coroner announced to all those involved in the case that a preliminary investigation is completed and sent the case to prosecutor or his friend.

Under the provisions of SCS coroner could disrupt the proceedings on the basis of orders prosecutor to conduct a preliminary investigation. In this case, the prosecutor could not directly the affairs of the coroner to send materials directly to the court of inquiry.

In pre-revolutionary criminal trial attorney did not perform supervision over the implementation of a judicial investigation of criminal procedural law. Written requirements (guidelines) Attorney coroner of investigative and other procedural actions given in the framework of the Attorney prosecuting functions in order to gather incriminating evidence against the accused [5, p.19].

It should be noted that the function of pre-trial preparation of the criminal case was assigned to judicial authorities. Major tools for forensic investigators were special circulars of the Ministry of Justice and the General Meeting Circulars offices of district courts on the ground. On the one hand, they provide substantial assistance to the coroner at the preliminary investigation (making investigations), because the law in this area was perfect. On the other hand, these explanations were «first swallows» of many changes in legal regulations in 1864, which followed immediately after the judicial reform. The reason for this is not served nothing but the desire of the government to weaken the force of law and freedom of judicial investigators conducting the preliminary investigation and return lost control of the entire judiciary in hand [6, p. 23].

**Conclusion.** The one of the brightest steps historical legal reforms 60-ies of the XIX century. Undoubtedly been the in-

roduction of a judicial investigation [11, with. 64]. Conducting pre-trial reform in Russia was accompanied by changes in all spheres of public life. As noted by prominent Russian scientist A. Koni: «... find a lawyer in the history of judicial reform brilliant picture drastic changes shapes and conditions of justice, will meet with the legislative work which, by its significance worthy of deep study ...» [12, p. 201].

Indeed, legislation, existing since the time of Peter I and Catherine II, could not fully regulate social relations based on bourgeois-democratic principles inherent laws not pre-reform period. In pronounced contradictions between the law and reality entered the legal rules governing criminal procedure relationships, failure of which the supreme power, and forced the first to reform the preliminary investigation that became a stimulus for all subsequent bourgeois-democratic reforms in the field of law [6, with. 29].

Judicial reform in 1864 cemented in the new principles and institutions of the separation judgment of the administration, the equality of all before the court, the immutability of judges and investigators, procurator, the election of judges and jurors, and reorganized the work of the old institutions [5, p. 3].

We agree with the position of AP Kruglikova who believes that compared with the police coroner had been given wider powers [13, p. 55]. For example, in art. 269 SCS solidified its right to inspect, amend and repeal any and all action police related to both inquiry and the implementation of urgent investigative actions in order of articles 258-259 SCS. However, at the same time, he was not fully independent in its actions because was subject straight district court indirectly – the provincial prosecutor and the governor [11, p. 64].

Summarizing the above, we can conclude that the process model coroner transfer authority provided in the previous investigation by the prosecution, the judiciary, which means the realization of the principle of competition at this stage of the process.

One of the innovations of the new CPC Ukraine, which entered into force on 19 November 2012, is also a significant expansion of the function of the court to control the rights and freedoms of parties to criminal proceedings during the preliminary investigation. Key and completely new to domestic criminal procedural law figure, which is authorized to carry out the new law, the above functions, the figure is investigating judge. [14]

Thus, we consider the comparison of judicial reform in 1864 in the Russian Empire to modern domestic reform of the judicial system will be able to use a positive experience for the institution of the investigating judge as an independent party criminal procedural process that is capable of protecting the constitutional rights and freedoms of man and citizen. But we should not automatically copy the rules and institutions that were previously as social, political, economic and other conditions over time are undergoing significant changes, and what was best under different historical conditions may not be appropriate in modern Ukraine. Obviously, the investigating judge must be a key institution in the criminal process, especially at the stage of preliminary investigation, since many of which, according to the CPC in 1960 were within the competence of the prosecutor and the investigator will now be impartial person who is investigating judge that is common in criminal proceedings in many foreign countries, irrespective of the criminal process.

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